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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/591,981	06/12/2000	Bruce McKendry	0414.63308	3537

24978 7590 01/15/2003

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EXAMINER

GHAFOORIAN, ROZ

ART UNIT PAPER NUMBER

3763

DATE MAILED: 01/15/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/591,981

Applicant(s)

MCKENDRY, BRUCE

Examiner

Roz Ghafoorian

Art Unit

3763

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 23 December 2002.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 6,8 and 10-13 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 6,8 and 10-13 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 June 2000 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Drawings*

1. This application has been filed with informal drawings which are acceptable for examination purposes only. Formal drawings will be required when the application is allowed.

### ***Claim Rejections - 35 USC § 102***

*Allowance of claims 6-8 are withdrawn and new rejection applied due to new found art as described below.*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) do not apply to the examination of this application as the application being examined was not (1) filed on or after November 29, 2000, or (2) voluntarily published under 35 U.S.C. 122(b). Therefore, this application is examined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

2. Claims 6-8 rejected under 35 U.S.C. 102(b) as being anticipated by US Patent no.4607596 to Whittlestone et al or US Patent No.6257847 to Silver et al.

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Whittlestone teaches an air pump with a movable diaphragm in a chamber with one out port, a shaft operatively connected to the diaphragm and a motor or a driving means which oscillates the diaphragm axially by means of the shaft, the motor being coupled to the diaphragm through threaded engagement the translates motor rotation into diaphragm oscillation.

3. Claims 6-8 rejected under 35 U.S.C. 102(e) as being anticipated by US Patent No.6257847 to Silver et al.

Silver teaches an air pump with a movable diaphragm in a chamber with one out port, a shaft operatively connected to the diaphragm and a motor or a driving means which oscillates the diaphragm axially by means of the shaft, the motor being coupled to the diaphragm through threaded engagement the translates motor rotation into diaphragm oscillation.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 10-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent No. 4607596 to Whittlestone et al, and further in view of US Patent No. 5749850 to Williams et al.

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Whittlestone teaches a milk collector unit having manifold assembly with a vacuum path 6 and a pulsating pressure path 9, a collection vessel 19 operatively connected to the vacuum path 21 a cup assembly 8 with a housing having an inlet and outlet a liner 7 extending from the housing inlet to the housing outlet, the liner being secured to the housing to form a space between the housing and the liner which is in communication with the pulsating pressure path, pressure in the pulsating path moving the liner within the housing, the manifold further having a hollow boss 10 which extends into the outlet within the liner.

Whittlestone however does not teach a pad or cushion in the cup assembly. Williams teaches a cushion in the cup assembly. (col.7, lines 15-20)

Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to have added the cushion in the cup assembly of Whittlestone because according to Williams the cushion will provide comfort for the patient. (col.7 lines 15-20)

### ***Conclusion***

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Roz Ghafoorian whose telephone number is 703-305-2336. The examiner can normally be reached on 8:30am-4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Casler can be reached on 703-308-3552. Any inquiry of a general

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nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0858.

RG  
December 30, 2002

A handwritten signature in black ink, appearing to read 'RGH', is positioned above the printed name of the examiner.

**MICHAEL J. HAYES**  
**PRIMARY EXAMINER**